

## CREDIT COUNSELING AND DEBTOR EDUCATION REQUIREMENTS

If you are an individual debtor in a chapter 7 or 13 case [or in a chapter 11 case in which section 1141(d)(3) applies], do **not** confuse the **credit counseling requirement** with the **debtor education requirement**. They are **not** the same!

1. **Before** filing your case, you must undergo **credit counseling** (*see below*).
2. **After** filing your case, you must fulfill the **debtor education requirement** by taking a course in personal financial management (*see below*).

**Credit Counseling Requirement:** *Prior to* commencing a bankruptcy case, **all** individual debtors – filing under *any* of the Bankruptcy Code chapters that are available to individuals (*i.e.*, chapter 7, 11, 12 or 13) – must undergo **credit counseling** from a credit counseling service that the United States Trustee has **approved** for this judicial district (Southern District of New York). [To view the list of approved services for this district, go to [http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc\\_approved.htm](http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm), select **New York** from the pull-down menu, and scroll down to the listings underneath the heading, “*Southern District of New York.*”]

**What and When to File:** After receiving credit counseling prior to case filing, the debtor must file – **at the time of filing the petition** – a signed, completed **Exhibit D**. In a joint case, each joint debtor must complete, sign and file a **separate** Exhibit D. Depending on how the debtor completes Exhibit D, the debtor must file – either at the time of case filing *or* within 15 days from the date of case filing – the **certificate** that was provided by the credit counseling service along with any **repayment plan** developed as part of credit counseling.

**Request for Extension/Request for Waiver:** A debtor who has not undergone credit counseling *prior to filing the petition* may request to have the court grant a **30-day extension** to receive credit counseling and file the certificate. As noted on **Exhibit D**, a debtor requesting the extension must so indicate in the appropriate section of Exhibit D. Additionally, as noted in **Exhibit D**, **there are strict requirements for obtaining this extension**, and anyone thinking of making this request should first **read Exhibit D very carefully**. Additionally, *at the time of filing the petition*, certain debtors may request to be **waived** of the credit counseling requirement based on having an incapacity or disability or being engaged in active military duty in a combat zone (*see Exhibit D*, which provides definitions for “incapacity” and “disability”). A debtor seeking the waiver must so indicate when completing **Exhibit D** and must also file a **separate written request**. The court’s website, [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov), has a form for use in making the separate written request for the waiver.

**Consequences for Failing to Comply with this Requirement:** Your case may be subject to dismissal, in which event you will be unable to obtain bankruptcy relief by means of the case that you filed. *See Exhibit D.*

**Debtor Education Requirement:** *After* commencing the bankruptcy case, individual debtors in a chapter 7 or 13 case [or in a chapter 11 case in which section 1141(d)(3) applies] must fulfill a debtor education requirement by taking a **course in personal financial management**. This course must be taught by a course provider that the United States Trustee has approved for this judicial district (Southern District of New York). [To view the list of approved course providers for this district, go to [http://www.usdoj.gov/ust/eo/bapcpa/ccde/de\\_approved.htm](http://www.usdoj.gov/ust/eo/bapcpa/ccde/de_approved.htm), select **New York** from the pull-down menu, and scroll down to the listings underneath the heading, “*Southern District of New York.*”]

**What and When to File:** After completing the course in personal financial management, the debtor must file with the court a signed, completed **Official Form 23** (“*Debtor’s Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management*”).<sup>1</sup> In a joint case, each joint debtor must complete, sign and file a **separate** Official Form 23. When completing the form, the debtor should provide the **certificate number** in the space that is provided on the form. The certificate furnished by the course provider should NOT serve as a substitute for filing Official Form 23, since Official Form 23 is a required filing. Those seeking a waiver based on incapacity, disability or active military duty in a combat zone should complete the bottom portion of Official Form 23 and file it with the court. The applicable **deadlines** for filing Official Form 23 may be found in the note appearing at the bottom of Official Form 23, as quoted immediately below:

“**Filing Deadlines:** In a chapter 7 case, file within 45 days of the first date set for the meeting of creditors under § 341 of the Bankruptcy Code. In a chapter 11 or 13 case, file no later than the last payment made by the debtor as required by the plan or the filing of a motion for entry of a discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. (See Fed. R. Bankr. P. 1007(c).)”

Those debtors seeking an extension of time (to file Official Form 23) must make their request to the judge **before** the expiration of the applicable deadline.

**Consequences for Failing to Comply with this Requirement:** Your case may be closed without entry of a discharge. To file Official Form 23 once the case is already closed, you will need to reopen the case and pay the case reopening fee.

<sup>1</sup> Official Form 23 was amended, effective December 1, 2008.